

OPIN

29.07.05

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02.11.05

PATENT COOPERATION TREATY

7617/wo/PCT

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P2From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)
29/04/05Applicant's or agent's file reference
see form PCT/ISA/220FOR FURTHER ACTION
See paragraph 2 belowInternational application No.
PCT/EP2004/013567International filing date (day/month/year)
30.11.2004Priority date (day/month/year)
02.12.2003International Patent Classification (IPC) or both national classification and IPC
A23G3/00, A23G1/00, A23P1/08Applicant
NESTEC S.A.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
☐ Box No. II Priority
☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
☐ Box No. IV Lack of unity of invention
☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
☐ Box No. VI Certain documents cited
☐ Box No. VII Certain defects in the international application
☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/013567

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/013567

Box No. V Reasoned statement under Rule 43b/s.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-20
Inventive step (IS)	Yes: Claims	
	No: Claims	1-20
Industrial applicability (IA)	Yes: Claims	1-20
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V.

1. Reference is made to the following document:

- D1 GB 486 090 A (INTERNATIONAL PATENTS DEVELOPMENT COMPANY) 27 May 1938 (1938-05-27)
- D2 US-A-5 098 728 (SINGER ET AL) 24 March 1992 (1992-03-24)
- D3 EP-A-0 564 077 (KRAFT GENERAL FOODS, INC) 6 October 1993 (1993-10-06)
- D4 US-A-4 037 000 (BURGE ET AL) 19 July 1977 (1977-07-19)
- D5 US-A-5 607 716 (DOHERTY ET AL) 4 March 1997 (1997-03-04)
- D6 US-A-5 505 982 (KRAWCZYK ET AL) 9 April 1996 (1996-04-09)
- D7 US-A-5 824 358 (BYE ET AL) 20 October 1998 (1998-10-20)

2. **Art. 33(2) PCT**

- 2.1 The wording "in an amount effective to provide ..." and "to provide a slippery mouthfeel ..." in claim 1 are results-to-be-achieved (PCT Guidelines, C-III, 4.7) and not distinguishing technical features. Furthermore, the term "dry" with respect to the term hydrocolloid is of relative nature and any edible component can be considered as a flavouring agent.

Conventional grained sugar confectionery such as icing, nougat, fondant, fudge and chewy sweets comprise sugar crystals dispersed in a continuous sugar syrup phase. The term "sugar glass" does not appear to be delimitable from a continuous sugar syrup phase and thus, the subject matter of claim 1 cannot be differentiated from the above mentioned products which comprise a hydrocolloid and up to 10% fat.

D1 discloses a fondant coating suitable for ice cream made up of dextrose crystals in a dextrose saturated solution comprising gelatine. The fat content is necessarily less than 10% since the only fat containing component, cocoa, in the composition is at about 9.8%.

D2 (table 2(b)) discloses low fat, ready-to-roll icing comprising cocoa powder, milk solids and gums. D3 (examples 1 to 3) discloses low fat chocolate chips comprising cocoa, non-fat milk solids, guar gum and starch. D4 (examples) discloses various fat

free, ready-for-use icings comprising xanthan gum and egg white. D5 (example 13) discloses low fat caramel comprising cocoa powder, guar gum and non-fat milk solids. D6 (examples 13) discloses low fat nougat (not the control) comprising cocoa powder, egg white and cellulose. Example 12 is also relevant. D7 (tables I & II) discloses fat free compositions made up of sorbitol crystals in a plastic sugar phase of maltitol syrup.

Thus, the subject matter of claim 1 is not novel in view of D1 to D7.

Any dependent claim will be allowable if the claim or set of claims to which it refers meets the requirements of the PCT.

- 2.2 Though the method of independent claim 19 concerns the disposing of the composition of claim 1 onto a confectionery product and then drying, the only example in the application as originally filed which incorporates a drying step is example 8. Thus, the term "drying" causes a lack of clarity (Art. 6 PCT) as the scope for which protection is sought is unclear. Thus, the subject matter of independent claim 19 is not novel with respect to D1, D2, D4 and D7 which concern coatings.
- 2.3 The method of independent claim 20 concerns the preparation of the coating whereby the sugar matrix, flavouring, hydrocolloid and milk are combined and dried. Concerning the drying step, the lack of clarity objection above (cf. 2.2) applies *mutatis mutandis*.

In view of D2, D3 and D5 which disclose the combining of a sugar matrix i.e. sugar crystals and sugar syrup, with a hydrocolloid and milk solids, the subject matter of claim 20 is not novel.

3. [The problem to be solved of the present application appears to concern the provision of low fat coatings which mimic chocolate coatings in terms of mouthfeel and their preparation. At present, the subject matter claimed does not appear to involve an inventive step (Art. 33(3) PCT) in view of the prior art D1 to D7.